IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9902 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTUBA W/O GIRUBHA @ GIRIRAJSINH GOHIL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

#. Present petitioner has challenged his order of detention under the Gujarat Prevention of Anti Social Activities Act 1985 (PASA Act for short) passed against him by way of this petition under Article 226 of the Constitution of India. The Police Commissioner, Rajkot

City, Rajkot in exercise of the powers conferred upon him under section 3(1) of the PASA Act passed the order of detention against the petitioner on 22.7.2000 and the petitioner came to be detained from that date. This detention order is the subject matter of this petition.

#. The grounds of detention placed on record reveal that with other associates the present petitioner was indulging in the activity of manufacturing country liquor and selling the same. In all right from 12.1.1999 to 19.7.2000 before the Rajkot city Police Station, 8 crimes have been registered against the petitioner under sections 66(1) b, 65 (e) (f) and 81 of the Bombay Police Act. The detaining authority took into consideration the investigation and the papers of the above said crimes registered against the petitioner. From the above material, the detaining authority reached to the conclusion that the petitioner was a dangerous person for the society and was obstruction to public health and public order and it was absolutely necessary to prevent forthwith the illegal activities of the petitioner for the maintenance of public health and public order. The detaining authority further observed that no remedy under section 57(c) of the Bombay Police Act was available to the detaining authority and that in all the above offences the petitioner was on bail and was continuing his illegal activities and the procedure for cancelling the bail of the petitioner was likely to consume more time and therefore, there was no other alternative except to pass the order under the PASA Act. The detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act.

#. Learned advocate Mr. H.R.Prajapati for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. Though the order impugned was attacked on various grounds it was vehemently urged that the order of detention is required to be set a side on the ground alone that the detaining authority failed to consider the less drastic remedy available to the detaining authority and therefore, the order of detention was vitiated by non application of mind.

#. There appears to be some substance in the contention of behalf of the petitioner. In Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995(2) GLR 1134 the Division Bench of this Court observed that the provisions under section 437(5) Cr.P.C. are more wide in

import and intent. The detaining authority was required to consider this aspect being less drastic remedy but it was not resorted to and in that case the detention order came to be passed was quashed on this ground because the detention order was vitiated by non application of mind by the detaining authority. This view was fortified by the decision of Division Bench of this Court in LPA No. 1056 of 1999 in the case of Yunusbhai Hasanbhai Ghanchi vs. District Magistrate decided on 15.9.1999 .

#. In this case also the detaining authority has observed that in all 8 crimes registered against the petitioner, the petitioner is on bail. However, the detaining authority has further observed that on bail also the petitioner is continuing his illegal activities of manufacturing illegal liquor and selling the same. Further the detaining authority observed that resorting to the procedure of cancellation of bail would be time consuming and hence the provisions of PASA Act were resorted to. At this juncture, non application of the mind by the detaining authority clearly emerges. As observed in the above two decisions, section 437(5) is far wider in its import and intent. Brushing aside this remedy available to the detaining authority by merely saying that the procedure was time consuming and by that not resorting to it would certainly amount to non application of mind by the detaining authority vitiating the detention order and therefore, the order impugned is required to be set aside.

#. In this view of the matter the detention order passed against the petitioner by the Police Commissioner, Rajkot City on 22.7.2000 under PASA Act is hereby ordered to be quashed and set aside. The petitioner Smt. Shantuba w/o Girubha @ Girirajsinh Gohil is ordered to be set at liberty forthwith if he is not requied to be detained in custody for any other purpose. Direct service permitted.

(J.R.Vora.J)

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